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tion conditional upon a ratable issue of each kind. But where, as in the principal case, no such class differences appear, such a condition seems an unwarranted interference with the discretion of the associates.<sup>15</sup> Moreover, as preferred is selling below par and common at a premium, it violates the preemption rule by discriminating in favor of common stockholders. The denial of an injunction, however, might be justified on the ground that, as common stock could be purchased in the market, damages at law furnished adequate relief to the appealing preferred stockholder.

**DISTRIBUTION OF DIVIDENDS ON STOCK BETWEEN LIFE TENANT AND REMAINDERMAN.**—The rights of the life tenant and remainderman where stock has been granted or bequeathed in trust for the use of one for life with remainder over to the other, have been the subject of great controversy. The tendency of the early English cases was to give all extraordinary dividends to the remainderman.<sup>1</sup> As finally settled by the House of Lords the English law gives all stock dividends to the remainderman and all cash dividends to the life tenant, unless the company could not legally increase its capital stock, in which case extraordinary dividends go to the remainderman.<sup>2</sup> The American courts may be divided roughly into three groups. Those which follow the "Massachusetts" rule, which is similar to the English rule, allot all dividends in the form of a new issue of stock to the remainderman, all cash dividends from earnings to the life tenant.<sup>3</sup> Under the "Pennsylvania" rule no distinction is made between stock and cash dividends. Each is apportioned between the life tenant and remainderman respectively according as it represents earnings since or before the creation of the trust fund.<sup>4</sup> The "New York and Kentucky" rule awards dividends, whether stock or cash representing accumulated earnings, to the life tenant.<sup>5</sup> A recent

<sup>15</sup> Ordinarily the amount and class of stock to be issued is left wholly to the discretion of the associates. *Page v. Whittenton Mfg. Co.*, 97 N. E. 1006 (Mass.); *Jones v. Concord, etc. R. Co.*, 67 N. H. 234, 30 Atl. 614. Consequently such a conditional decree would usually be an attempt by the court to do indirectly what it cannot do and ought not to do directly.

<sup>1</sup> *Brander v. Brander*, 4 Ves. 800; *Paris v. Paris*, 10 Ves. 185.

<sup>2</sup> *Bouch v. Sproule*, 12 App. Cas. 385; *Irving v. Houstoun*, 4 Paton App. Cas. 521.

<sup>3</sup> *Minot v. Paine*, 99 Mass. 101; *Lyman v. Pratt*, 183 Mass. 58, 66 N. E. 423; *Boardman v. Mansfield*, 79 Conn. 634, 66 Atl. 169; *Boardman v. Boardman*, 78 Conn. 451, 62 Atl. 339; *De Koven v. Alsop*, 205 Ill. 309, 68 N. E. 930; *Millen v. Guerrard*, 67 Ga. 284 (by statute).

<sup>4</sup> *Earp's Appeal*, 28 Pa. St. 368; *Soehnlein v. Soehnlein*, 146 Wis. 330, 131 N. W. 739; *Miller v. Payne*, 136 N. W. 811 (Wis.); *Van Doren v. Olden*, 10 N. J. Eq. 176; *Holbrook v. Holbrook*, 74 N. H. 201, 66 Atl. 124; *Pritchitt v. Nashville Trust Co.*, 96 Tenn. 472, 36 S. W. 1064; *Thomas v. Gregg*, 78 Md. 545, 28 Atl. 565. See *Ex parte Humbird*, 114 Md. 627, 641, 80 Atl. 209, 214. *Quinn v. Safe-Deposit and Trust Co.*, 93 Md. 285, 48 Atl. 835, seems *contra* on the question of apportionment. It is probable that this rule is applied only to extraordinary dividends, regular dividends going to the life tenant regardless of their source. See *Earp's Appeal*, 28 Pa. St. 368, 375; 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., § 466. But see *Lang v. Lang*, 57 N. J. Eq. 325, 328, 41 Atl. 705, 706.

<sup>5</sup> *McLouth v. Hunt*, 154 N. Y. 179, 48 N. E. 548; *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778; *Cox v. Gaulbert*, 147 S. W. 25 (Ky.). See *Kalbach v. Clark*, 133 Ia. 215, 110 N. W. 599. Maine adopts that feature common to both the "Massachusetts" and "New York and Kentucky" rules which disregards the time during which the earnings

Delaware case following the Massachusetts cases awards to the remainderman stock representing additions to the corporation's plant made from earnings since the creation of the trust fund. *Bryan v. Aikin*, 82 Atl. 817 (Del.).

Any party must have as its basis the intent of the grantor or testator.<sup>6</sup> In general it would seem that the grantor or testator regards as the *corpus* the undivided interest, represented by the stock certificates, in the assets of the corporation at the time of the creation of the trust, and as income any earnings of the total corporate assets of which this *corpus* is an undivided fraction which may be distributed by the corporation. Logically, then, the "Pennsylvania" rule would seem correct in denying to the life tenant such part of the dividend as represents earnings previous to the creation of a trust fund. There are serious practical difficulties, however, in the application of this theory which have influenced many courts.<sup>7</sup> The Pennsylvania court itself has adopted the practical expedient of giving to the remainderman only so much as is necessary to compensate him for any depreciation in the value of the original trust fund.<sup>8</sup> The issue of stock dividends presents a further difficulty. The interest of the shareholder in the corporate funds after such issue remains the same. Only the evidences of his interest have been changed and in reality no distribution of earnings has been made.<sup>9</sup> In this regard the "Massachusetts" rule would seem preferable. Even if the view that stock dividends are substantially distributions of funds is accepted, the practice of the courts following the "Pennsylvania" and "New York and Kentucky" rules is still open to objection. The new stock conveys an interest not only in the earnings which its issue capitalized, but also in the old capital. The benefit of any enhancement in value of the original capital thus inures to the life tenant, — a benefit to which he is obviously not entitled under any view.<sup>10</sup> Neither the "Pennsylvania" nor the "New York and Kentucky" rule then seems free even from theoretical difficulties. The "Massachusetts" rule, though open to some objections, has the great advantage of affording a simple working rule for the guidance of trustees.

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POLICE POWER AND INTERSTATE COMMERCE. — The power to provide for the peace, health, morals, and safety of society comprises what are in fact the ultimate aims of government. All activity, not excepting interstate commerce, must be under its domain. It is conceivable that the federal government might exercise it as incidental to some express power conferred upon it. But because of the intimate relation of the subjects of this power to the welfare of each community, and the necessarily

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were made. *Richardson v. Richardson*, 75 Me. 570. Minnesota makes no distinction between stock and cash dividends. *Goodwin v. McGaughey*, 108 Minn. 248, 122 N. W. 6. The Supreme Court of the United States, Rhode Island, and Virginia adopt that part of the "Massachusetts" rule by which stock dividends are regarded as a part of the *corpus*. *Gibbons v. Mahon*, 136 U. S. 549; *Brown v. Larned*, 14 R. I. 371. Cf. *Kaufman v. Charlottesville Woolen Mills*, 93 Va. 673, 25 S. E. 1003.

<sup>6</sup> *Gibbons v. Mahon*, *supra*.

<sup>7</sup> *Irving v. Houstoun*, *supra*; *Lyman v. Pratt*, *supra*.

<sup>8</sup> *Boyer's Appeal*, 224 Pa. 144, 73 Atl. 320.

<sup>9</sup> *Boardman v. Mansfield*, *supra*.

<sup>10</sup> *Carter v. Crehore*, 12 Hawaii 309.